

EXHIBIT 4D

Witness: Charles Seward

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1 A Uh-huh.	1 what kind of arrangement she had with them. I don't
2 Q -- who in your view are able to take more	2 know how much -- you know, I don't know how to explain
3 time off than others?	3 it, you know, but it's like -- it's like -- give you
4 A All you got to do is check that Avaya.	4 an example, if I can expound.
5 Avaya has everything, all your log-in times, times	5 As far as I'm concerned, I'll take that
6 you're not -- give you an example. I had -- had to	6 prize time, but coming to work and being on time is
7 review my vacation time. I was able to give -- I was	7 your job. I shouldn't be awarded for being on time.
8 able to go through my Avaya reports month by month and	8 That's just another way of getting folks out of here
9 actually see what days I logged in. If it was a day I	9 when the service levels are up high, whatever. You
10 didn't log in, obviously I was not at work, so it's --	10 know, I don't know how to -- it's right there in black
11 you know, you can use those Avaya reports all kinds of	11 and white.
12 ways.	12 Q But you did take your prize time?
13 Q Well, but I'm trying to understand. I	13 A I sure did. My daughter -- I forgot what I
14 mean, there's personal time. I think you said you get	14 had to do. I took her to -- oh, yeah. My daughter's
15 -- tell me what you -- earlier you referred to the two	15 13th birthday, sleepover, so I used that half-day.
16 hours. What was the two hours?	16 Q I think I saw something in your declaration
17 A For -- if you -- if you are not late.	17 to the effect of cell phones were not allowed on
18 Q Not the prize two hours?	18 the --
19 A Okay.	19 A Uh-huh.
20 Q But I think I'd asked, what if you need to	20 Q -- on the fifth floor?
21 go to a doctor?	21 A Yes.
22 A Yes. Yes.	22 Q Is that right?
23 Q And am I correct that you could go to the	23 A That's correct.
24 doctor as long as you weren't gone more than two	24 Q How do you make a personal phone call?
25 hours? That was acceptable?	25 A You do not use the phones on the walls
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1 A Well, it was more clearly defined. I think	1 because they claim that those are private, but that's
2 there was some complaints to HR about it, and then	2 not the case, and they also say you are not supposed
3 during one of the meetings she put kind of more	3 to use cell phones on the floor, but everybody uses
4 defined guidelines for it. You know, if it was over	4 their cell phone. I don't care how much he says that
5 -- if you were going to run over two hours, then you	5 you're not supposed to be seen walking -- as soon as I
6 were going to have to take a half-day, half-day	6 get up off my break, I'm down on my phone or looking
7 vacation.	7 at my phone, because the phone systems that they use,
8 Q Okay.	8 nobody trusts them.
9 A But some folks were actually asked to make	9 Q Is -- do you ever make personal phone calls
10 up time or something. I still remember that. It was	10 on the -- on the Avaya system?
11 something going on, but I'm only speaking for myself.	11 A No. Never. Never.
12 Q Were you ever asked to make up time?	12 Q Does anybody?
13 A No. Well, they said to me something once,	13 A Never. Never. Never.
14 but I -- I just looked at them like -- I asked for	14 Q And you do recognize that part of the --
15 this time. I requested this time. And after that I	15 that people listen to your calls as part of the
16 never heard anything about any more, so I guess they	16 performance appraisal process?
17 left it alone.	17 A Yes. Yes.
18 Q And what I want to try to understand is,	18 Q There are times that overtime is actually
19 are there people, as you said, not on the list, and I	19 announced by Miss Williams that there's available
20 assume what you mean by that is like a teacher's pet	20 overtime?
21 for people that are close to Miss Williams. Are those	21 A Yes.
22 people allowed more flexibility on when they come and	22 Q Did that happen under Mr. Bethea?
23 go, for example?	23 A It probably did, but -- it -- it did, but I
24 A I said there are some folks, but, you know,	24 can't remember, because there were times when you are
25 I just don't want to name names because I don't know	25 low or shorthanded or something comes up, but I can't

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<p>1 really say definitively, like that happened.</p> <p>2 Q Earlier we talked about some of the teams,</p> <p>3 specifically I think under Miss Williams, and we</p> <p>4 talked about the software receive calls and --</p> <p>5 A Yes.</p> <p>6 Q Obviously the -- your team, the entitlement</p> <p>7 team?</p> <p>8 A Yes.</p> <p>9 Q Have you -- are you familiar with the</p> <p>10 Rational Lotus Team?</p> <p>11 A Yes.</p> <p>12 Q What team is that?</p> <p>13 A They sit right next to us also. They're</p> <p>14 primarily contractors. They'll take calls for</p> <p>15 rational products, which is software package, and also</p> <p>16 for Lotus. You know, Smart Speak, Organizer, things</p> <p>17 that you have that you have on your laptop.</p> <p>18 Q How many people are on that team?</p> <p>19 A Right now, two -- about five or six. Five.</p> <p>20 Five.</p> <p>21 Q And they report to Miss Williams?</p> <p>22 A Yes, sir.</p> <p>23 Q Are there any other Rational Lotus Teams</p> <p>24 within -- on the fifth floor that don't report to</p> <p>25 Miss Williams?</p>	<p>1 Q You don't know what she told them?</p> <p>2 A No. I don't have no idea. I never seen</p> <p>3 any e-mails. I haven't seen -- heard from her people,</p> <p>4 anything, comments or whatever. Directives.</p> <p>5 Q Is the same true for Lisa Moody?</p> <p>6 A Lisa Moody?</p> <p>7 Q Do you know Lisa Moody?</p> <p>8 A Yes. I know of her. I don't -- I just</p> <p>9 know of her.</p> <p>10 Q Do you know who reports to her?</p> <p>11 A No. But she just moved again.</p> <p>12 Q Do you know what -- before she just moved,</p> <p>13 do you know what her team or teams did?</p> <p>14 A It was entitlement also.</p> <p>15 Q And do you know what she told her</p> <p>16 employees --</p> <p>17 A No.</p> <p>18 Q -- about expectations with respect to</p> <p>19 logging in or being available?</p> <p>20 A No, sir.</p> <p>21 Q What about Vicki Torres? Do you know Vicki</p> <p>22 Torres?</p> <p>23 A Yes, sir.</p> <p>24 Q And do you know what -- who reports to her?</p> <p>25 A I know some of the reps, yes, sir.</p>
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<p>1 A Not that I know of, sir.</p> <p>2 Q Do you know Sara Cerny?</p> <p>3 A Yes.</p> <p>4 Q And who is she?</p> <p>5 A She's a manager. I believe that's an</p> <p>6 entitlement team too, but I'm not sure. I think it's</p> <p>7 hardware. I'm not sure.</p> <p>8 Q Do you know what floor she is on?</p> <p>9 A She's on the fifth floor also.</p> <p>10 Q Do you know who her employee -- who reports</p> <p>11 to her?</p> <p>12 A I know -- I just know, you know, of guys I</p> <p>13 talked to about football and stuff like that. She</p> <p>14 moves around. She's liked on the second -- she was in</p> <p>15 an area right next to us, and now she's on the other</p> <p>16 side, I think in the 1600 building or 1500 building.</p> <p>17 Q Do you know how many people report to her?</p> <p>18 A No. No, I don't know the numbers.</p> <p>19 Q Do you know what Miss Cerny has told her</p> <p>20 reports about logging in or expectations with respect</p> <p>21 to logging in?</p> <p>22 A When she was in the -- our side -- being</p> <p>23 available when -- I really can't speak what she says</p> <p>24 to those folks. I don't know -- I don't want to say I</p> <p>25 know. I don't --</p>	<p>1 Q Do you know the nature of the teams that</p> <p>2 report to her?</p> <p>3 A The hardware entitlement.</p> <p>4 Q Do you know that Miss Torres tells her</p> <p>5 people about --</p> <p>6 A No, sir.</p> <p>7 Q Let me finish.</p> <p>8 A Sorry.</p> <p>9 Q What Miss Torres tells her people about</p> <p>10 being ready, logging in, those types of things?</p> <p>11 A No, sir.</p> <p>12 Q Karen Troutman?</p> <p>13 A No, sir.</p> <p>14 Q Do you know Karen Troutman?</p> <p>15 A Yes, sir.</p> <p>16 Q Do you know what she tells her reports</p> <p>17 about being available for the phone, logging in,</p> <p>18 arrival times, those types of things?</p> <p>19 A No, sir.</p> <p>20 Q Roseanne Davis?</p> <p>21 A Yes.</p> <p>22 Q Do you know who she is?</p> <p>23 A Yes.</p> <p>24 Q Do you know what she tells her teams about</p> <p>25 logging in, being available for the phones, arrival</p>

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1 times, those types of things? 2 A No, sir. 3 Q Do you know what her teams do? 4 A Yes, sir. She's also entitlement and also 5 -- yes. 6 Q What else do they do besides entitlement? 7 A I think a couple of -- of the agents just 8 got re -- got retrained for front end and back end. 9 In other words, a front-end agent, so they do both 10 jobs. 11 Q What is back end? 12 A Back end is our group, entitlement, where 13 we verify support. Front end, they initially take the 14 customer and -- 15 Q What about Peter Starratt? Do you know 16 Mr. Starratt? 17 A Yes, I know Peter. 18 Q Do you know what his teams do? 19 A Yes, sir. 20 Q What do they do? 21 A They're also hardware entitlement. 22 Q Do you know what Mr. Starratt has told his 23 teams about arrival times, expectations for log-in, 24 phone availability? 25 A No, sir.	1 A No, sir. 2 Q ITB? 3 A No, sir. 4 (Thereupon, marked for identification, 5 Defendant's Exhibit D18.) 6 BY MR. RAY: 7 Q I'm going to hand you what's been marked 8 Exhibit 18 and ask you to take a look at that and see 9 if you recognize it. 10 A Yes, I recognize it. 11 Q And just turning to the last page of 12 Exhibit 18, is that your signature? 13 A Yes, sir. 14 Q I want to ask you specifically about, I 15 believe -- let me find it. Oh, yes. If you look at 16 the very last paragraph, it starts on the next-to-last 17 page. It's paragraph 30. Do you see that? It starts 18 with all of the other -- and I want to for now -- and 19 we probably will be coming back to this, but if you go 20 to subparagraph 3 on the last page, it says, "I talked 21 to other call center employees, who informed me that 22 they also were performing off-the-clock work both 23 before and after their shifts and did not receive 24 overtime compensation for these hours consistent with 25 IBM's policies as described above."
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1 Q Do you know what GTS is? 2 A GTS? No, sir. 3 Q Do you know whether there are GTS -- do you 4 know if GTS is a business unit of IBM or a division? 5 A I don't recognize the term "GTS." 6 Q We talked a little earlier about schedules 7 for these depositions, and we talked about a 8 Mr. Starkey. Do you happen to know Mr. Starkey? 9 A No, sir. 10 Q Ever talk to him? 11 A No. Now, let me back up. I might have 12 seen him and said hello or whatever. I just don't 13 know by sight or -- no, sir. 14 Q In the past five years have you supervised 15 any employees? Have you had supervisory 16 responsibility? 17 A No. Temporary. Temporary, but it was 18 before I worked for Kerry Bethea, so I'm not sure it 19 was the last six years or -- I would say no. Five 20 years? No. 21 Q Have you ever reviewed any policies from 22 any business units other than IMBDP? And I'm talking 23 about not the firmwide policies that we're going to 24 talk about, but anything specific to other business 25 units, like GTS?	1 Did I read that right? 2 A Yes. 3 Q And my first question is, which employees 4 did you talk to? 5 A You want -- you want actual names? 6 Q Yes. 7 A I got to go back and take names off a list, 8 but this is just general conversations with other 9 employees. I didn't just go and just say, give me 10 your name, first and last name. Do you -- I'm not 11 sure how I'm supposed to answer this. 12 Q Well, do you recall anyone by name that you 13 talked to about this topic that you -- is in 14 subparagraph 3 of paragraph 30 of Exhibit 18? 15 A I -- I've talked to -- general conversation 16 with employees at lunch rooms, walking out the 17 building, walking in the building. I can't give you a 18 specific name. I mean, I've talked to folks after the 19 fact about this because people have approached me and 20 asked me questions about it. But prior to this, 21 giving you specific names, what I'm talking about here 22 is general conversation with employees in the 23 building. 24 Q And when you say after this, are you 25 talking about --

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<p>1 A After the case started.</p> <p>2 Q Okay. All right. Well, let's first talk</p> <p>3 about the general conversations. You can't name</p> <p>4 anyone you've had these -- you can't identify anyone</p> <p>5 by name that you have had these general conversations</p> <p>6 with; is that right?</p> <p>7 A That's correct.</p> <p>8 Q And are these people you've had general</p> <p>9 conversations with -- well, let me ask that a</p> <p>10 different way. These people you've had these general</p> <p>11 conversations with, can you tell me what teams they</p> <p>12 were on and who their supervisors were?</p> <p>13 A Well, you got Partner World. That was</p> <p>14 common practice in Partner World, and the other</p> <p>15 entitlement teams. Hardware entitlement, you know.</p> <p>16 Q And you're software entitlement; correct?</p> <p>17 A That's correct.</p> <p>18 Q But you can't tell me who told you this was</p> <p>19 common practice?</p> <p>20 A They didn't use the word "common practice,"</p> <p>21 but they indicated they had to be in and up and</p> <p>22 running and be able to sign on, start taking calls at</p> <p>23 their start time.</p> <p>24 Q Did they tell you who -- what their manager</p> <p>25 or supervisors had said about expectations?</p>	<p>1 A That's correct.</p> <p>2 Q They actually told you that --</p> <p>3 A Yes.</p> <p>4 Q -- in these conversations?</p> <p>5 A That's a good example because I'm sure if</p> <p>6 you do an audit, you'll find those memos.</p> <p>7 Q But you can't name a single person who told</p> <p>8 you that?</p> <p>9 A Only employees that I've talked to are</p> <p>10 after the fact.</p> <p>11 Q You can't name a single person on these</p> <p>12 general conversations before the fact; correct?</p> <p>13 MR. ZOURAS: For purposes of clarity, before</p> <p>14 what fact?</p> <p>15 MR. RAY: Before the lawsuit. He had</p> <p>16 defined that, but that's fair.</p> <p>17 MR. ZOURAS: Thank you.</p> <p>18 THE WITNESS: These are just general</p> <p>19 conversations with employees in the lunchroom and</p> <p>20 outside. How can I explain it? I just know a</p> <p>21 lot of these people by face. I don't even know</p> <p>22 them by their first name, and it sounds</p> <p>23 far-fetched, but except for the people in my</p> <p>24 immediate area, I can go up and walk and say, I</p> <p>25 talked to that person, I talked to that person,</p>
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<p>1 A No. We never like talked about service</p> <p>2 levels or productivity type conversations. It was</p> <p>3 just running in, trying to get in the building and</p> <p>4 bringing up our systems and getting ready to take</p> <p>5 calls.</p> <p>6 Q Were -- were these general conversations</p> <p>7 you're describing, before you filed suit?</p> <p>8 A Yes. Yes. Yes, sir.</p> <p>9 Q And were you asking -- or did you raise the</p> <p>10 issue in these general conversations? Were you asking</p> <p>11 people if this is what they were doing, or was it</p> <p>12 more, oh, I got to go log in?</p> <p>13 A No. I was not canvassing or soliciting or</p> <p>14 nothing like that. Just general conversations, and</p> <p>15 people get -- they don't use the word "fire" around</p> <p>16 there, but, you know, there was times when they</p> <p>17 actually said, you know, if you got ten latenesses,</p> <p>18 you could be -- how could you say? Walked to the</p> <p>19 door.</p> <p>20 Q And ten lateness?</p> <p>21 A Ten lateness.</p> <p>22 Q Ten tardies? And then they would actually</p> <p>23 give the detail of, for them if meant -- late meant</p> <p>24 not only not being on the phone, but not being on the</p> <p>25 computer?</p>	<p>1 but some of them I don't even know by the first</p> <p>2 name.</p> <p>3 BY MR. RAY:</p> <p>4 Q Let's talk about the conversations after</p> <p>5 the lawsuit was filed. Who have you talked to after</p> <p>6 your lawsuit was filed?</p> <p>7 A About how -- how the system worked or</p> <p>8 about -- just generally about coming in early and</p> <p>9 things like that?</p> <p>10 Q Let's start with coming in early and things</p> <p>11 like that?</p> <p>12 A I talked to Reggie McArthur. I talked to</p> <p>13 Lawrence Moore. I've talked to -- let's see who else.</p> <p>14 I -- to be honest, I really have not been amplifying</p> <p>15 this whole thing on the floor with folks that have</p> <p>16 come up to me, and those two guys are -- but the folks</p> <p>17 in that arena, they were all in the same boat.</p> <p>18 Q Well, I'm just asking right now who you've</p> <p>19 talked to since the lawsuit was filed?</p> <p>20 A Those two and Sharrie Brown and Lisa</p> <p>21 Bufford, B-U-F-F-O-R-D, and Joe Yacowitz. Joseph</p> <p>22 Yacowitz, Y-A-C-O-W-A-T-Z.</p> <p>23 Q Anyone else?</p> <p>24 A That's it.</p> <p>25 Q Do you recall when you talked to Miss -- I</p>

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1 assume -- let me back up. I assume you talked to them 2 individually?	1 A Same. 2 Q -- or conversations?
3 A No. It was sitting around lunch table, 4 general conversations. General. Not at the house, 5 not walking out the building. You know, whatever. It 6 was just general conversation, sitting -- sitting at a 7 lunch table eating lunch.	3 A Actually, his conversation was less because 4 he works in the other side of the building. He works 5 in the front end, at the software receive call.
8 Q Tell me about your conversation with Reggie 9 McArthur?	6 Q Is he a contractor? Do you know?
10 A Just basically, you know -- you know, that 11 we're -- just talked about, because he's been in the 12 department a long time. I think about three years, 13 maybe.	7 A Yes. Reggie is a supplemental.
14 Q Is he in SCET?	8 Q What about Sharrie Brown? Is she a 9 contractor?
15 A Yes.	10 A No. She's a regular employee.
16 Q So you talked about -- he's been in the 17 department for three years. What did you talk about 18 specifically regarding?	11 Q Regular?
19 A Nothing. Just -- just, you know -- we just 20 talking about, you know, getting in here early and 21 getting the systems up and being ready to take calls 22 and just general questions like, talking about that.	12 A The other three are regular employees.
23 Q When did you have this discussion with 24 Reginald McArthur?	13 Q Got it. What about -- let's talk about 14 Sharrie Brown. Is she in SCET?
25 A You know, off and on over maybe a -- I	15 A Yes.
	16 Q Reported to Miss Williams?
	17 A Yes.
	18 Q Was she also in IBM Teach when you were 19 there?
	20 A Yes. Lisa and Joe also.
	21 Q So they were all in IBM Teach, and they 22 came over to SCET --
	23 A Correct.
	24 Q -- when you did?
	25 A Correct.
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1 don't know. Here and there, probably, you know, it's 2 -- I don't have no specific time. Just off and on.	1 Q Tell me about your conversation with 2 Miss Brown?
3 Q Since you filed the lawsuit?	3 A Just the -- just the early arrival, how we 4 all had to -- used to do it all the time in earnest, 5 trying to get here on time and log in on time and get 6 the systems on time so we could take calls on time.
4 A Yes. We -- we've talked about -- I talked 5 about just getting in there early to get everything up 6 and logging in on time. That's all.	7 Just, you know, because we all were on the same boat. 8 We all worked for Kerry Bethea.
7 Q Did he say he did that?	9 Q So she -- did Miss Brown indicate to you 10 that when she worked for Bethea that she felt like she 11 had to be logged into her tools, logged into the phone 12 at the start of her scheduled shift?
8 A Did what?	13 A Sure. We all felt that way.
9 Q Came in early to get things logged in?	14 Q Did she say that with respect to 15 Miss Williams?
10 A No. Actually, it was just me talking most 11 of the time, or -- he really didn't have too much to 12 comment on. He did say that at one time, years ago, 13 they did have to get in there early and get the system 14 up.	16 A I can't speak on that.
15 Q Who does he report to?	17 Q What about Miss Bufford? Am I saying that 18 right?
16 A Juanlyn Williams.	19 A Yes.
17 Q But he didn't say anything specifically 18 about current --	20 Q What about your conversations with --
19 A No. It was just general conversation.	21 A No. In fact, she's very low key. She 22 really didn't have too much to say. She was -- we'll 23 pray about it and let God take care of this.
20 Q But he didn't say that he felt like he had 21 to get in early currently to get logged into the 22 computer system?	24 Q Did Miss Bufford indicate that she felt 25 like she was required when she was under Mr. Bethea,
23 A No. He did not say that to me, ever.	
24 Q What about Lawrence Moore? Tell me about 25 your conversation --	

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<p>1 to come in early and be logged into her tools and her 2 -- and her phone at the beginning of her scheduled 3 shift?</p> <p>4 A Yes. We all felt that way.</p> <p>5 Q Did she say that with respect to 6 Miss Williams?</p> <p>7 A No. We really didn't -- no. I mean, we 8 expounded about it, but we didn't mention her by name. 9 I mean, maybe I should be corrected, but -- but, no. 10 We really didn't speak about Miss Williams. I'm 11 trying -- just general conversation. You know, are we 12 talking about something? Are we really talking about 13 Miss Williams? I can't really say that.</p> <p>14 Q You were clearly talking about Mr. Bethea, 15 it sounds like?</p> <p>16 A At one point to current, yes. But we're 17 saved in the sense that we can log right on the 18 phones.</p> <p>19 Q What about Joe Yacowitz? Tell me about 20 your conversations with him.</p> <p>21 A Same. We're all sitting, just like we're 22 sitting here. That's how we're sitting at the lunch 23 table, so it was general conversation.</p> <p>24 Q And so it sounds like you're in this 25 conversation. All of these individuals were at the</p>	<p>1 changed. I don't know what happened on the back end, 2 because I wasn't privy to it, but then after that, you 3 can -- you can log in, in AUX-3 anytime you want. 4 They said, there was no problem. Prior to that, 5 counselor, you had to be logged in at your start time, 6 ready to work.</p> <p>7 Q Which date is the Exhibit 4?</p> <p>8 A Exhibit 4, I'm showing 4/7/08.</p> <p>9 Q '08? What about Exhibits 1 and 2? Did 10 that -- or I'm sorry. Two and three?</p> <p>11 A Right. Something -- something happened. I 12 don't -- something happened where people were getting 13 marked late but they were really there, and so they 14 finally said, go ahead; do your AUX-3.</p> <p>15 Q Let me -- I asked the question about any 16 conversations with Brown, Bufford, or Yacowitz where 17 they made the comment or indicated to you that they 18 felt like that under Miss Williams they were required 19 to be logged into their tools and the phone at the 20 time of their scheduled shift or the start of their 21 scheduled shift. You said basically, yes, and I would 22 like you to tell me what -- who said something that 23 makes you believe that and what they said?</p> <p>24 A Basically said that -- they said that we 25 were required to be there and ready at our start time.</p>
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<p>1 table? Reggie?</p> <p>2 A No.</p> <p>3 Q No?</p> <p>4 A Reggie was not there. Usually we're 5 talking about football, and then we will talk about 6 life, liberty, and the pursuit of happiness and, you 7 know --</p> <p>8 Q But it sounds like there was a discussion 9 at a lunch table with Sharrie Brown, Lisa Bufford, and 10 Joe Yacowitz?</p> <p>11 A Right. We -- we have lunch basically every 12 day almost together. We came over from Teach 13 together, and we still remain connected, so at lunch 14 we usually sit around and hash out things and talk 15 about old times and stuff like that.</p> <p>16 Q And in any of these lunch discussions with 17 Brown, Bufford, and Yacowitz did any of those three 18 indicate that they felt like under Miss Williams they 19 were required to be logged into their tools, logged 20 into the phone at the start of their scheduled shift?</p> <p>21 A I would say basically, yes. But again, 22 that whole thing with the -- with the AUX codes, 23 AUX-3 -- forgive me. I'm just trying to figure out 24 which one of these exhibits -- Exhibit 4, I know 25 something happened where, you know, everything</p>	<p>1 System ready to take calls at our start time, 2 scheduled start time.</p> <p>3 Q Who said that?</p> <p>4 A Juanlyn Williams. Now -- let me back up a 5 little bit. Currently, in the last couple of 6 department meetings, she used the term as -- available 7 as soon as possible. Prior to that, it used to be, 8 you're supposed to be ready and ready to take calls at 9 your start time.</p> <p>10 Q I'll come back to that. I'm asking right 11 now, which of these people, or if it's all three -- 12 Brown, Bufford, or Yacowitz -- said something to you 13 that indicated that they believed that they were 14 required to be phone ready?</p> <p>15 A I -- I won't make that -- I won't make the 16 statement that they definitively said this, because I 17 can't -- I can't remember every conversation that we 18 had, but it was to our understanding that we supposed 19 to be available at the start time.</p> <p>20 Q But you can't remember anything they 21 actually said?</p> <p>22 A Yes. I can't quote them, you know, or 23 paraphrase or quote them or -- but I -- maybe -- no. 24 I wouldn't be able -- I don't want to say, that they 25 said this or on this date or around this date, and I</p>

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<p>1 -- I can't -- I can't make that.</p> <p>2 Q We were talking about people you talked to</p> <p>3 after your lawsuit, and you listed Reggie McArthur,</p> <p>4 Lawrence Moore, Sharrie Brown, Lisa Bufford, Joe</p> <p>5 Yacowitz. Anyone else that you can think of?</p> <p>6 A I -- I can't recall anybody else.</p> <p>7 Q Let me go back to something you said just a</p> <p>8 minute ago. You said that prior to this change, and</p> <p>9 we've been talking about Exhibits 2, 3, and 4, I</p> <p>10 believe, on when this change occurred when you could</p> <p>11 start going into AUX more freely. You said that</p> <p>12 Miss Williams would say that you need to be ready at</p> <p>13 the start of your shift?</p> <p>14 A Yes.</p> <p>15 Q And did she specifically say that you</p> <p>16 needed to be logged into all your tools at the start</p> <p>17 of your shift?</p> <p>18 A She didn't say -- she didn't say it like</p> <p>19 that, logged into all your tools. She indicated you</p> <p>20 should be available at our start time. She didn't</p> <p>21 say -- use the verbiage tools, no. Just said, you</p> <p>22 should be available at your start time.</p> <p>23 Q And when did she say that?</p> <p>24 A I -- I can't -- she's -- probably has</p> <p>25 something in her e-mails also. In meetings she's said</p>	<p>1 A Just available to take calls, inbound</p> <p>2 calls.</p> <p>3 Q She said it that way?</p> <p>4 A That way.</p> <p>5 Q At your start time?</p> <p>6 A At my start time, and also -- trying to</p> <p>7 think -- trying to remember the class. It was</p> <p>8 something else with that. I forgot. I'm sorry.</p> <p>9 Q But you don't remember her precise words?</p> <p>10 A No. I'm paraphrasing.</p> <p>11 Q And this was during training?</p> <p>12 A Yes, during training.</p> <p>13 Q Any other times she said that? That you</p> <p>14 recall specifically?</p> <p>15 A No. Just basically during training, and</p> <p>16 trying to remember if I got any -- if we received any</p> <p>17 Sometimes or instant messages, but that's it.</p> <p>18 Q Did -- have you talked to anyone -- and I'm</p> <p>19 talking about the call center reps, the people on the</p> <p>20 phone -- about your claims in this case who disagreed</p> <p>21 with them?</p> <p>22 A Who disagreed with my case?</p> <p>23 Q With you? Disagreed with what you were</p> <p>24 saying? They said, you know, I don't agree. I don't</p> <p>25 have to be phone ready. I don't know what they're</p>
Page 223	Page 225
<p>1 that prior to, you know, but I can't pinpoint a date</p> <p>2 and time for that.</p> <p>3 Q Do you know who was present when she said</p> <p>4 it?</p> <p>5 A No. But you can use one of the exhibits</p> <p>6 right here. It says, "You're required to start</p> <p>7 working at your scheduled start time."</p> <p>8 Q And I'm talking -- we've talked about the</p> <p>9 exhibits, and so I'm just trying to figure out when</p> <p>10 she -- other times she said it?</p> <p>11 A Okay.</p> <p>12 Q And I think you were talking about actual</p> <p>13 verbal statements?</p> <p>14 A Right. Right now, her verbiage is as soon</p> <p>15 as possible.</p> <p>16 Q In the past did she use different verbiage?</p> <p>17 A I -- if I remember -- I'm only quoting</p> <p>18 myself. I remember when we was getting a --</p> <p>19 expectations during our training that we were -- we</p> <p>20 were expected to be in -- available at our start time.</p> <p>21 Q Did she explain -- did she use those exact</p> <p>22 words?</p> <p>23 A Yes. Basically she's paraphrasing it, yes,</p> <p>24 sir.</p> <p>25 Q And did she explain what available meant?</p>	<p>1 talking about.</p> <p>2 A No. Basically they -- being in that</p> <p>3 environment for so -- for the ten years, you realize</p> <p>4 who you can speak to and who you can't; who is the --</p> <p>5 on the list and who's not. So I really, unless</p> <p>6 somebody drops a couple words to me or whatever, I</p> <p>7 really don't -- I just -- just, there's so many -- I</p> <p>8 wasn't concerned about it. I really -- about speaking</p> <p>9 about it or talking with anyone about it, but I held</p> <p>10 my conversations down to a low roar, to tell you the</p> <p>11 truth.</p> <p>12 Q So no one has specifically told you that</p> <p>13 they disagree with your basic allegation in the case?</p> <p>14 A They have in their actions or their body</p> <p>15 languages, but they're not stupid enough to say</p> <p>16 anything.</p> <p>17 Q Who has in their body language?</p> <p>18 A Just Mary Davis, Ella Ward, Virginia</p> <p>19 Bryant. Of course, Kerry Bethea. I'm trying to think</p> <p>20 of anybody else. Which I thought was -- you know,</p> <p>21 their right, you know, so -- but again, I --</p> <p>22 Q Is -- Mary Davis, is she on the phones?</p> <p>23 A Yes.</p> <p>24 Q Ella Ward?</p> <p>25 A No. She's the lead.</p>

Witness: Charles Seward

58 (Pages 226 to 229)

Page 226	Page 228
<p>1 Q Virginia Bryant?</p> <p>2 A No. She's like a staff assistant to the</p> <p>3 second-line manager. She's also -- but, you know,</p> <p>4 it's -- it's one those unwritten laws. I mean, you</p> <p>5 know, just the body language, you know, but I just --</p> <p>6 if you knew my -- my demeanor, you'd know that I just</p> <p>7 blow that off and say, hey, how are you?</p> <p>8 Q Are Mary Davis, Ella Ward, and Virginia</p> <p>9 Bryant on the list that you have described? And by</p> <p>10 list, I mean the people who are favored by --</p> <p>11 A Oh, yeah. Easily.</p> <p>12 Q Are there other reps on the list?</p> <p>13 A You know, I don't know the -- the list</p> <p>14 itself or whatever, but it's a perception. It's just</p> <p>15 my perception, so it's -- you know, if you ask me for</p> <p>16 my perception, I can tell you, but if you want me to</p> <p>17 name names, I can't do that because I never seen that</p> <p>18 list.</p> <p>19 Q You're not suggesting there's actually a</p> <p>20 written list, are you?</p> <p>21 A No. She has her favorites.</p> <p>22 Q Over the past, say, eight to ten years you</p> <p>23 have made some complaint either to Mr. Date -- am I</p> <p>24 saying that right?</p> <p>25 A Date.</p>	<p>1 A Yes and no.</p> <p>2 Q Describe why you'd say yes and no?</p> <p>3 A It's clearly that he was in -- he was -- I</p> <p>4 don't know how to explain it. There were issues.</p> <p>5 Depends on -- it depends on the situation, what</p> <p>6 situation you're talking about.</p> <p>7 Q Let me hand you what's been marked</p> <p>8 Exhibit 19.</p> <p>9 (Thereupon, marked for identification,</p> <p>10 Defendant's Exhibit D19.)</p> <p>11 BY MR. RAY:</p> <p>12 Q And this is a document that IBM has</p> <p>13 produced in this litigation, and if you go to the</p> <p>14 second page of that, I believe that is unedited Speak</p> <p>15 Up text --</p> <p>16 A Uh-huh.</p> <p>17 Q -- from your complaint, but I want you to</p> <p>18 look at it and tell me if that's correct?</p> <p>19 A Yes.</p> <p>20 Q And this looks like it was back in 2004?</p> <p>21 A That's correct.</p> <p>22 Q And this was a complaint. Number 1 there</p> <p>23 is talking about Mr. Bethea witnessing a disagreement</p> <p>24 and then low morale, disrespect, those types of</p> <p>25 things.</p>
Page 227	Page 229
<p>1 Q Date?</p> <p>2 A It's spelled Date --</p> <p>3 Q Right.</p> <p>4 A -- D-A-T-E, Stanley Date, which is D-A-T-E,</p> <p>5 but it's pronounced Date.</p> <p>6 Q Date? Is that correct?</p> <p>7 A That's correct.</p> <p>8 Q And who is Mr. Date?</p> <p>9 A He's the human resources representative.</p> <p>10 Q Have you also used the Speak Up complaint</p> <p>11 system within IBM?</p> <p>12 A Yes. I used it I believe, once.</p> <p>13 Q Do you recall when that was?</p> <p>14 A No, sir, I don't. Maybe a year and a half</p> <p>15 ago, two years.</p> <p>16 Q Have you used the Open Door?</p> <p>17 A Many moons ago. I -- a long time ago.</p> <p>18 Q What is Open Door?</p> <p>19 A Open Door policy is when you've spoken to</p> <p>20 your first line and second line and the issue was not</p> <p>21 resolved, so you go to the next level, and you go</p> <p>22 outside of the organization to resolve the issue.</p> <p>23 Q Has Mr. Date been responsive to your</p> <p>24 request to look into things or to address certain</p> <p>25 things?</p>	<p>1 A Yes, sir.</p> <p>2 Q And then Number 2, it says, "Ebony Jones</p> <p>3 was awarded a new position in sales. My question is,</p> <p>4 after two years of over 150 tardy arrivals to work and</p> <p>5 over 200 tardies for breaks and lunches, what is the</p> <p>6 guidelines promotion/advancement?"</p> <p>7 Did I read that right?</p> <p>8 A That's correct.</p> <p>9 Q And then the third one talks about how do I</p> <p>10 know how many times an employee is late, those types</p> <p>11 of things, and apparently it's because it was</p> <p>12 published to everybody?</p> <p>13 A That's correct.</p> <p>14 Q And you submitted this particular complaint</p> <p>15 to the unedited -- or to the Speak Up; right?</p> <p>16 A I believe so.</p> <p>17 Q And I may have asked this, but what is</p> <p>18 Speak Up? Is that a way to submit complaints?</p> <p>19 A Yes.</p> <p>20 Q Who addressed this? Who responded to the</p> <p>21 complaint to you? Do you know?</p> <p>22 A I'm sorry. I don't know who responded,</p> <p>23 because it's kind of a long time ago.</p> <p>24 Q Yeah. This looks to be back in about 2004.</p> <p>25 Does that seem accurate?</p>

Witness: Charles Seward

59 (Pages 230 to 233)

Page 230	Page 232
<p>1 A Right, but it was a long time ago. 2 Maybe -- 2003, maybe. I'm not even sure. Oh, okay. 3 I remember the young lady. She was out of New York. 4 Q Who are you referring to? 5 A There was a -- I believe that the person 6 that responded to me, she was out of New York. It 7 might have been Miss Geiger, Michele Geiger. 8 Q Do you recall what the response was? 9 A No, sir. 10 Q Did it satisfy you? The response? Were 11 you satisfied with how the complaint was dealt with? 12 A I'm not sure how this was resolved. 13 (Thereupon, marked for identification, 14 Defendant's Exhibit D20.) 15 BY MR. RAY: 16 Q I hand you what has been marked as Exhibit 17 20, and this appears to be an e-mail exchange or 18 e-mails forwarded from you ultimately, involving Stan 19 Date. I'm not sure where I see where -- here. Hang 20 on. 21 A No. This is -- 22 Q It says on the first page there, it's an 23 e-mail from Mr. Date to you, and I'm sure I'm 24 mispronouncing the last name. I think I already did. 25 Dated June 15, 2005, and it says, "Charles, from what</p>	<p>1 time I said I would have to appear in court for a 2 subpoena. It was a domestic dispute. 3 Q And there's an e-mail from you dated 4 June 28, 2005, in the middle of page there on Exhibit 5 21 to Mr. Date. 6 A Yes, because they would not give me time to 7 get off to go to the court. 8 Q And then Mr. Date at the top there responds 9 that you should talk to Sharon if you had not already; 10 is that right? 11 A Yes. 12 Q Was that Sharon Lofton? 13 A Yes. 14 Q Did you -- do you recall if you got this 15 resolved? 16 A I'm pretty sure I did. I just can't 17 remember how I went forward with it, but I had to go 18 and -- I got a subpoena to go to court, and they 19 didn't want give me -- they didn't want me to go to 20 court. 21 Q Now, going to court for that situation had 22 nothing to do with IBM; correct? 23 A Right. Right. It was just a -- I -- 24 Q Was it a dispute over whether you would get 25 paid time off?</p>
Page 231	Page 233
<p>1 I can see, the need for the password is from the 2 deskside support team to install a new application. 3 You can always change it later. Why did you feel it 4 necessary to be cc'ing me?" 5 Do you recall this situation? 6 A They were asking for passwords. They was 7 asking for all our passwords. I forgot what this was 8 about, but basically -- so I asked -- I asked Stan. I 9 said, hey, is this normal? Are we supposed to give 10 out our passwords to our desktops? That's all. 11 Q Did you -- when you had a question about 12 the way things were handled during that time period, 13 did you feel comfortable just presenting it to Mr. 14 Date? 15 A Right. I just -- I just e-mailed him, or I 16 think I even -- might have been Sametime, but I just 17 e-mailed him. 18 (Thereupon, marked for identification, 19 Defendant's Exhibit D21.) 20 BY MR. RAY: 21 Q I hand you what's been marked Exhibit 21, 22 and I'll ask you to take a look at that e-mail, and 23 this appears to be dealing with a subpoena issue. Do 24 you recall this situation? 25 A Yes, I remember this. This is that one</p>	<p>1 A No. It was just -- I forgot. It was just 2 -- I didn't want to get -- you know, I told them what 3 was going on, you know, and they just -- this is an 4 example of them -- if I was one of the favorites, I 5 would have been going. No problems. 6 Q This was under Mr. Bethea? 7 A Yes, sir. This is a good example. 8 Q And ultimately they did let you go; is that 9 right? 10 A Yes. I had to go. I had to be in court. 11 Q Did you have to use a vacation day? 12 A No. No. I'm positive I didn't have to use 13 my own time for the -- I think Stan talked to 14 somebody. I forgot who it was. I had to go. 15 Q Sure. 16 (Thereupon, marked for identification, 17 Defendant's Exhibit D22.) 18 BY MR. RAY: 19 Q Let me hand you what's been marked Exhibit 20 22, and if you go to the bottom -- or at the bottom of 21 the first page there's an e-mail from you to Mr. 22 MacDonald referring to changing your note ID. Do you 23 recall what this is? Feel free to take a second to 24 look at it. 25 A Yes. I think this is the same situation</p>

Witness: Charles Seward

60 (Pages 234 to 237)

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<p>1 with the – they were doing something. They wanted my 2 IDs or something.</p> <p>3 Q And there at the top of page 1 of Exhibit 4 22 Mr. Date sends you an e-mail thanking you for 5 cc'ing him on the note, and then he says, "I just 6 wanted to be sure you understand that since your 7 computer and software is owned by and provided to you 8 by IBM to do your work, the asset belongs to IBM, who 9 has the right to any information saved on the 10 computer, and your manager acts as an agent for IBM."</p> <p>11 Do you recall receiving that?</p> <p>12 A Yes.</p> <p>13 Q And was that your understanding at the 14 time? That that was IBM's –</p> <p>15 A Yes.</p> <p>16 (Thereupon, marked for identification, 17 Defendant's Exhibit D23.)</p> <p>18 BY MR. RAY:</p> <p>19 Q I'm going to hand you what's been marked as 20 Exhibit 23, and I'll ask you to take a look at that 21 exhibit, and tell me if you recall the issue that you 22 were raising at the top of the first page there to 23 Mr. Campagna? Campagna?</p> <p>24 A Campagna.</p> <p>25 Q Campagna?</p>	<p>1 BY MR. RAY:</p> <p>2 Q Mr. Seward, I'm going to hand you what's 3 been marked as Exhibit 24.</p> <p>4 (Thereupon, marked for identification, 5 Defendant's Exhibit D24.)</p> <p>6 BY MR. RAY:</p> <p>7 Q And the top of that e-mail is an e-mail 8 from Mr. Date to you dated April 25, 2007, and then 9 there is some – a chain, that looks like, of e-mails.</p> <p>10 On the second page there seems to be a complaint that 11 goes on for a few pages, and I just wanted to ask you, 12 see if you recognize that as your complaint?</p> <p>13 A Yes.</p> <p>14 Q And earlier in the deposition you talked 15 about complaining about the training that you received 16 in SCET. I believe you referenced that, but is this a 17 complaint about that?</p> <p>18 A Yes, sir.</p> <p>19 Q Who addressed this complaint, or who 20 responded to you about the complaint? Do you recall?</p> <p>21 A I think after this complaint was lodged, 22 the management team backed up a little bit and 23 readdressed – readdressed the training that was 24 conducted. They put some actions in place to reduce 25 some of the – some of the training.</p>
Page 235	Page 237
<p>1 A Yes. I remember the note.</p> <p>2 Q And what was that situation?</p> <p>3 A Situation, we had went through our yearly 4 evaluation, and then like a day or so prior to it 5 being due, they asked us to change the whole section 6 of it.</p> <p>7 Q And you were unhappy with that?</p> <p>8 A Of course. That was our job performance 9 description of what we was supposed to do for the job, 10 and at the last minute they changed the description of 11 the job.</p> <p>12 Q And Mr. – I think you said earlier, 13 Mr. Campagna is an HR?</p> <p>14 A He's an HR representative. He's a staff HR 15 representative out of Texas.</p> <p>16 Q And what was the resolution for that issue? 17 Do you recall?</p> <p>18 A I don't remember what exactly happened on 19 the end. I would have to go back and take a look at 20 my PBC and see what happened with that.</p> <p>21 MR. RAY: We're almost out of tape, so why 22 don't we take just a very quick break.</p> <p>23 THE VIDEOGRAPHER: Off video. 24 (Thereupon, a recess was taken.)</p> <p>25 THE VIDEOGRAPHER: On video.</p>	<p>1 Q Did – were you satisfied with how the 2 complaint was resolved or dealt with?</p> <p>3 A I would say as a 50/50 – yes and no, 4 because I felt that there was quite a bit of animosity 5 after the complaint.</p> <p>6 Q From whom?</p> <p>7 A From the management team and her dream 8 team.</p> <p>9 Q Is the dream team different?</p> <p>10 A The people on the list, yes.</p> <p>11 Q If you could take a look at Exhibit 25.</p> <p>12 (Thereupon, marked for identification, 13 Defendant's Exhibit D25.)</p> <p>14 BY MR. RAY:</p> <p>15 Q This is an e-mail dated February 5, 2008, 16 from, it appears, your IBM address to your personal 17 address?</p> <p>18 A Yes. I made sure I had a copy of this.</p> <p>19 Q What is this?</p> <p>20 A Oh, God, yes. Geez. This is terrible. I 21 remember this. What happened was, there was a 22 management evaluation, if I could use that word, or 23 like a program – oh, it's called a manager feedback 24 program where you – you evaluate your manager and 25 also make any comments that you wish.</p>

Witness: Charles Seward

61 (Pages 238 to 241)

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<p>1 Well, basically in her meeting, which is 2 part of the feedback of this whole program, she's 3 supposed to have a — hold a meeting with her team and 4 discuss some of the issues that was brought forward by 5 her team, and there were some issues that were really 6 flagrant, and listening to the comments, you probably 7 knew who they were.</p> <p>8 I think one of them was mine. One of 9 them. But she — she read the -- she read the 10 comments of the employees almost basically word for 11 word, so it almost said, okay; he must have made that 12 comment, or she made -- you know, it was that bad. 13 That's what that is.</p> <p>14 Q Did you make this — this e-mail is 15 articulating your complaint, and you sent it to 16 yourself. Did you actually submit this complaint 17 through a channel?</p> <p>18 A Sure did.</p> <p>19 Q Which channel? Do you recall?</p> <p>20 A I think I sent it to Date or Campagna, one 21 or the other.</p> <p>22 Q And do you recall who got back to you 23 regarding the complaint or to discuss the resolution 24 of the complaint?</p> <p>25 A No. I'm sorry. I'm not sure who came, who</p>	<p>1 each year?</p> <p>2 A Yes.</p> <p>3 Q And that you will comply with them?</p> <p>4 A Yes.</p> <p>5 Q If you will turn with me on Exhibit 26 -- 6 well, let me back up. These are dated 2007. Do you 7 confirm typically in January of the following year, 8 each year?</p> <p>9 A Yes.</p> <p>10 Q So, for example, January of '08?</p> <p>11 A Yes.</p> <p>12 Q Did you read these business conduct 13 guidelines?</p> <p>14 A Yes.</p> <p>15 Q If you will turn with me to section 3.1, 16 which I believe is on page 6. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q It talks about communications channels?</p> <p>19 A Yes.</p> <p>20 Q And it starts with, "If you know of any 21 unlawful or unethical situation, you should 22 immediately tell IBM whatever you know or have heard 23 about it. You can do so in one of several ways." 24 Right?</p> <p>25 A Correct.</p>
Page 239	Page 241
<p>1 got back with me.</p> <p>2 Q Were you satisfied with the resolution of 3 that complaint?</p> <p>4 A It was -- it was -- I'm trying to be -- I'm 5 trying to be cordial in my response. It's just very 6 vindictive, you know. The response was, I believe 7 they spoke with her. She was a little bit more low 8 key after that, and then also her demeanor was -- I 9 have no -- really no comment on this.</p> <p>10 Q So is it fair to say you were not entirely 11 satisfied?</p> <p>12 A No. No. There's no way. God, no. That 13 was terrible. Some people almost cried.</p> <p>14 Q You're familiar with the IBM business 15 conduct guidelines?</p> <p>16 A Yes.</p> <p>17 (Thereupon, marked for identification, 18 Defendant's Exhibit D26.)</p> <p>19 BY MR. RAY:</p> <p>20 Q I'm going to hand you what has been marked 21 Exhibit 26 and ask you to take a look at those, and I 22 will represent to you that these are the IBM business 23 conduct guidelines dated December 18, 2007. Are you 24 required with respect to the business conduct 25 guidelines, to -- to verify that you reviewed them</p>	<p>1 Q And during -- let's just limit it to the 2 last five, six years of your employment with IBM. 3 You've recognized that there are ways to bring 4 complaints?</p> <p>5 A Correct.</p> <p>6 Q You can go to your manager? You can use 7 the Open Door; is that right?</p> <p>8 A Correct.</p> <p>9 Q And you can use the Confidentially 10 Speaking; right?</p> <p>11 A Yes.</p> <p>12 Q You can go to your HR rep?</p> <p>13 A Correct.</p> <p>14 Q And, in fact, you've used all of those --</p> <p>15 A Yes.</p> <p>16 Q -- methods? All of these communication 17 channels, or with respect to these communications 18 channels, why did you not complain about off-the-clock 19 work? Through one of these communication channels?</p> <p>20 A I'm glad you asked that question, because 21 there's an old saying, a fox that guards the chicken 22 coop, which means when you don't trust anybody for 23 three lines of communication. That's why I never went 24 to them.</p> <p>25 Q So you don't trust Stan --</p>

Witness: Charles Seward

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Page 242	Page 244
<p>1 A I don't trust them, because, Number 1, just 2 like your position is to protect IBM, you're 3 protecting their interests right now, and so that's 4 basically what Stanley Date did, Campagna, the 5 immediate first-line managers. They're only — 6 they're doing what they have to do to protect their 7 jobs and not to be exposed for any other wrongdoings 8 that they have been doing.</p> <p>9 So when I got to this point, I got to the 10 point where being a veteran and an older employee, you 11 know, you talk to people, and it was just — it was 12 like talking — it was like there's nothing wrong 13 there. There's not a problem here, and so to be 14 honest with you, I was looking at this situation for 15 over two and a half years and thinking that it would 16 clear up or whatever.</p> <p>17 So — I just sat there and I said, you 18 know, these folks — they're so busy being vindictive. 19 I can use all kinds of adjectives. Favoritism, 20 vindictive, wishy-washy with the results, because you 21 mentioned several times after looking at these 22 e-mails, were you satisfied with the results? Were 23 you satisfied with the results?</p> <p>24 No, I was not satisfied with the results, 25 and I guarantee you, once you dig deep enough and you</p>	<p>1 Q And throughout this period of time you're 2 not shy about making complaints? Whether you trust 3 the upper management or whether you trust Mr. Date or 4 not, you have made plenty of complaints, and you 5 openly cc him on issues or bcc him on issues?</p> <p>6 A Correct.</p> <p>7 Q And my question is, why wouldn't you 8 have — if indeed you really had this issue two years 9 ago, why wouldn't you have given them a chance? You 10 gave them a chance with the other problems?</p> <p>11 A This — I want to be perfectly clear. I do 12 not trust Sandra Lofton. I'm trying —</p> <p>13 Q Do you trust Stanley Date?</p> <p>14 A I think he's a good Christian man, but he's 15 also got a job to do.</p> <p>16 Q Let's turn to page 9 in section 3.53, IBM 17 proprietary information, and earlier we looked at the 18 confidentiality agreement you signed. You're aware 19 that IBM takes steps to protect its proprietary 20 information; correct?</p> <p>21 A Correct.</p> <p>22 Q And that part of the business conduct 23 guidelines, which I'll refer to as BCGs, at times 24 provide that that's one of your responsibilities as 25 well; correct?</p>
<p>1 will see what I'm talking about, this whole thing was 2 — everything is, you know, you're robbing 3 hard-working people so that they can get their bonuses 4 on their back end. And the Number 1 thing here is 5 this. How can I say this? If I felt totally 6 confident that the HR team would address this issue 7 like I think it should be addressed, I would have 8 never went this route, Number 1.</p> <p>9 Number 2, the management team does not 10 respect their employees. Doesn't care about them. 11 Doesn't care if they get a dime or a penny. That's 12 why we're going this route.</p> <p>13 Q Okay. And I just want to make sure my 14 question is clear, and I understand you filed a 15 lawsuit. You said just then in your answer that this 16 has been going on for two and a half years and you 17 were hoping it would clear up?</p> <p>18 A Well, when I say that — not to cut you 19 off. When I say that, that I had contemplated this 20 lawsuit almost two years ago, before I met with this 21 law team that I am with.</p> <p>22 Q So you have had this perceived problem, you 23 allege this is a problem, for at least two years; 24 correct?</p> <p>25 A Yes.</p>	<p>1 A Correct.</p> <p>2 Q Let's turn to section 3.6.</p> <p>3 MR. ZOURAS: Page 13.</p> <p>4 MR. RAY: Page 13, yes.</p> <p>5 BY MR. RAY:</p> <p>6 Q This section is entitled, "Recording, 7 reporting, and retaining information."</p> <p>8 Did you read this section?</p> <p>9 A Yes.</p> <p>10 Q And do you agree that this section provides 11 that it's the employee's responsibility to accurately 12 record their time on their time cards?</p> <p>13 MR. ZOURAS: Let me just impose an objection 14 to the extent this calls for a legal conclusion.</p> <p>15 You can answer if you understand it.</p> <p>16 THE WITNESS: Is this a yes or no?</p> <p>17 BY MR. RAY:</p> <p>18 Q However you want to answer it. I'm asking 19 you — let me restate the question — is it your 20 understanding under the business conduct guidelines 21 that it's each employee's responsibility to accurately 22 record their time on their time sheets?</p> <p>23 MR. ZOURAS: Same objection. You can 24 answer.</p> <p>25 THE WITNESS: Can I expound? Or answer and</p>

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1 expound? 2 BY MR. RAY: 3 Q Let me just ask you first if you can answer 4 the initial question. Is it your understanding that 5 you are supposed to accurately fill out a time sheet? 6 A Yes. 7 Q And you want to expand? 8 A Yes. It's the same situation where you let 9 go home early or you work through your lunch. Those 10 are all -- those are all directives from the 11 management. 12 Q And -- well, let's -- let's address that. 13 Isn't it under the BCGs, the employee's responsibility 14 to complain about actions or conduct that they feel 15 violate the business conduct guidelines? 16 A In this environment you don't complain. 17 Q That was not my question. My question was, 18 is it the obligation of the employee under the 19 business conduct guidelines to present or make others 20 aware of violations of the business conduct 21 guidelines? 22 MR. ZOURAS: Let me object that the document 23 speaks for itself. To the extent it calls for a 24 legal conclusion, I further object. You can 25 answer if you understand.	1 have a record of the last time we spoke. And 2 basically he responded to me, he says, you know -- you 3 know, why -- basically, he was saying, you're going 4 over my head. Instead of coming to me, you're going 5 directly to my boss or whatever, and then basically he 6 indicated that -- I'm trying -- I'm paraphrasing, but 7 he basically advised me not to do it. It's not to my 8 best interests to do that again. 9 Q Did you tell him what unethical situations 10 you were referring to? 11 A No. I didn't get that far, and at that 12 point I was already -- you know, I had, you know, my 13 information, some of my information together. 14 Q And Mr. Date's reaction to you was, for 15 your own good, don't report unethical conduct? That's 16 how you took it? 17 A No. He didn't say, don't report it, but he 18 basically said, you know, don't -- I'm paraphrasing. 19 Basically in his own words is that, you know, don't go 20 through -- don't send nothing up to -- I'm -- 21 what's -- gosh, what is the HR? Forgot the 22 gentleman's name now. I sent a note to the president 23 of HR. 24 He said, I wouldn't do that. 25 So by his reaction and his response, I
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1 THE WITNESS: No. I'm not going to answer. 2 BY MR. RAY: 3 Q Let's just go to the sections. Let's go 4 back to section 3.1 on page 6. "If you know of an 5 unlawful or unethical situation, you should 6 immediately tell IBM whatever you know or have heard 7 about it. You can do so in one of several ways." 8 Did I read that correctly? 9 A Correct. 10 Q Is it not your understanding, then, Mr. 11 Seward that to the extent that you believe that there 12 was unlawful or unethical conduct occurring, that it 13 was your obligation to report it? 14 A That is correct. In the last conversation 15 I had with Mr. Date, I explained to him that there is 16 some unethical actions going on, and at that point he 17 indicated that, listen, for your own good, you know, 18 before you send any notes to HR or to -- to the HR 19 president, you go through him, but basically he was 20 telling me, for your own sake, I wouldn't do that 21 anymore. 22 Q Wait a minute. You said that -- 23 A That's when I stopped talking to him. 24 Q When was that? 25 A Oh, gosh, I don't recall, but he should	1 said, you know what? I can't talk to him no more. 2 Q Why would you send it to the president of 3 HR instead of just to Mr. Date to begin with? 4 A Because it -- you ever go forward with a 5 legitimate concern and it's taken totally personal? 6 Totally -- I don't know. Like, you know, how dare 7 you, you know, go and complain about X, Y, and Z. You 8 know, it's not taken for what it's worth and let's fix 9 this problem. They took those type of confrontations 10 personally instead of trying to take it 11 constructively. In other words, that's basically it. 12 I mean -- 13 Q Did Mr. Date ever take it personally? 14 MR. ZOURAS: Hold on. Let me object to the 15 extent this calls for Mr. Seward to delve into 16 the mental state of another person. To the 17 extent that you can answer, go right ahead. 18 MR. RAY: Well, he's already testified that 19 other people were taking it personally, so I 20 assume -- 21 THE WITNESS: Yes. They were taking it 22 personal, but for Mr. Date, I can't answer for 23 him, but I'm just going by the actions and the 24 body and the body language and business demeanor, 25 that -- why would I do that, you know? You

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<p>1 know --</p> <p>2 BY MR. RAY:</p> <p>3 Q But you don't remember when this</p> <p>4 conversation with Mr. Date was?</p> <p>5 A No. I had not -- it was a scheduled</p> <p>6 conference call, and that was the last time I talked</p> <p>7 to him.</p> <p>8 Q Was it this -- was it 2008?</p> <p>9 A No. It was -- I'm not sure, sir.</p> <p>10 Q You have the ability to -- well, let me</p> <p>11 back up. You currently use eTOTALS?</p> <p>12 A Right.</p> <p>13 Q And you understand that eTOTALS goes -- is</p> <p>14 what drives your paycheck --</p> <p>15 A Yes.</p> <p>16 Q -- is that correct?</p> <p>17 A Correct.</p> <p>18 Q And eTOTALS starts with your schedule, your</p> <p>19 standard schedule, so for you it would be ten to</p> <p>20 seven, I believe?</p> <p>21 A Yes.</p> <p>22 Q With a one-hour lunch?</p> <p>23 A Yes.</p> <p>24 Q So on an average week or normal week, where</p> <p>25 there's no overtime or there's no vacation or what</p>	<p>1 A We've never put our overtime -- give you an</p> <p>2 example. I had an issue where I had to swing an hour</p> <p>3 around. I put it on the wrong date. I had to delete</p> <p>4 one and put the hour someplace else. I only changed</p> <p>5 it on eTOTALS. I never changed it in my ILC.</p> <p>6 Q Do you know if other employees have used</p> <p>7 the eTOTALS to record overtime?</p> <p>8 A That's where you're supposed to put your</p> <p>9 overtime is on eTOTALS.</p> <p>10 Q And you've done that?</p> <p>11 A Yes. I've done that a couple times, yes.</p> <p>12 Q And do you know one way or another whether</p> <p>13 other employees do that?</p> <p>14 A For eTOTALS or --</p> <p>15 Q For eTOTALS? Let's stick with eTOTAL?</p> <p>16 A If they want to get paid, that's the way --</p> <p>17 the only way that they get paid the overtime.</p> <p>18 Q Give me one second here.</p> <p>19 (Thereupon, marked for identification,</p> <p>20 Defendant's Exhibit D27.)</p> <p>21 BY MR. RAY:</p> <p>22 Q I'm going to hand you what's been marked as</p> <p>23 Defendant's Exhibit 27. You're aware that IBM's --</p> <p>24 there are policies on the intranet that you can</p> <p>25 access; correct?</p>
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<p>1 have you, you would get a check for 40 hours?</p> <p>2 A Yes.</p> <p>3 Q You have the ability to go into eTOTALS</p> <p>4 and, for example, if you took a vacation day, adjust</p> <p>5 that, or make an entry that you took a vacation?</p> <p>6 A We don't register our vacation on eTOTALS.</p> <p>7 Q What do you register on eTOTALS?</p> <p>8 A Overtime and sick time.</p> <p>9 Q And you have the ability to go in and do</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q The ILC system, the claims system?</p> <p>13 A Yes.</p> <p>14 Q That's supposed to match the eTOTALS data;</p> <p>15 correct?</p> <p>16 A Never happen.</p> <p>17 Q Your understanding was not that it was</p> <p>18 supposed to match?</p> <p>19 A No. We never -- we were never -- we don't</p> <p>20 put our overtime in ILC, I don't believe. No. The</p> <p>21 only place we put our overtime is on the totals. ILC</p> <p>22 is for the -- ILC is like a recordkeeping mechanism</p> <p>23 for the sponsor that we actually support.</p> <p>24 Q And your understanding is that ILC does not</p> <p>25 -- is not supposed to match eTOTALS?</p>	<p>1 A Yes, sir.</p> <p>2 Q And have you accessed those policies at</p> <p>3 times?</p> <p>4 A Just -- I've done this on-line at work.</p> <p>5 Q Pardon?</p> <p>6 A I done this on-line at work.</p> <p>7 Q You've checked the policies?</p> <p>8 A Right. Not from home, but at work.</p> <p>9 Q Have you -- and I think I said intranet, or</p> <p>10 I tried to.</p> <p>11 A Yes.</p> <p>12 Q Can you -- there's actually an IBM</p> <p>13 intranet; correct?</p> <p>14 A Yes.</p> <p>15 Q Now, can you access the intranet from home?</p> <p>16 A I -- not really, no. Well, I never really</p> <p>17 tried, to be honest with you. I only -- maybe for my</p> <p>18 retirement compensation. I think that basically goes</p> <p>19 through there some kind of way, but I really don't</p> <p>20 access through intranet from home. I do everything at</p> <p>21 work.</p> <p>22 Q The -- the exhibit that I just gave to you,</p> <p>23 Exhibit 27, is a policy on the intranet entitled</p> <p>24 additional compensation overtime. This one is dated</p> <p>25 February 28 of '05. Do you know whether you ever</p>

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1 reviewed this? 2 A I've looked at this probably two or three 3 times. Maybe even more, probably. 4 Q Why do you look at it? 5 A Because I was trying to figure out -- you 6 know, that's why I know a little bit more about ILC 7 and Avaya and then also eTOTALS. That's why I was 8 able to say what the ILC was. 9 Q Is -- and then you recognize that the 10 policy on the intranet is that if you go down to the 11 third entry there, "Weekly overtime, that all hours in 12 excess of 40 hours worked exclusive of meal breaks 13 during an employee's regular payroll workweek will be 14 considered as weekly overtime." 15 A Yes. 16 (Thereupon, marked for identification, 17 Defendant's Exhibit D28.) 18 BY MR. RAY: 19 Q And let me just quickly give you Exhibit 20 28, which is I believe the same policy, just with a 21 new date on it, and I will just ask you the same 22 question. First of all, do you know whether you've 23 reviewed that version of the policy? It's dated 24 March 3, '08, I believe. 25 A Probably. This is the one I probably	1 and tell me if you have ever reviewed that document or 2 that on-line version of that document? 3 A Yes. I've seen this. 4 Q Is this the meal break/rest break policy? 5 A Yes. 6 (Thereupon, marked for identification, 7 Defendant's Exhibit D30.) 8 BY MR. RAY: 9 Q Now let me hand you Exhibit 30 and ask you 10 if you have ever seen or reviewed this policy? 11 A No, I've never seen that. This is 12 interesting, yes. 13 Q You've never seen this policy? 14 A I never seen that one. 15 Q The first sentence there says, "Nonexempt 16 employees must submit time cards that are complete, 17 accurate, and timely." 18 Did I read that correctly? 19 A I'm familiar with this, this part here. 20 This part here, this is blatant in our area. 21 Q The compensatory time? 22 A Yes. 23 Q The second page? 24 A Yes. It was blatant. 25 Q Have you used compensatory time?
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1 reviewed, not the one prior. 2 Q And I think the language I pointed to you 3 is the same. The third section down on the weekly 4 overtime, do you see that? It says, "All hours in 5 excess of 40 hours worked exclusive of the employee 6 meal breaks during an employee's regular" -- 7 THE REPORTER: I'm sorry. You're reading 8 too fast. I can't understand. 9 BY MR. RAY: 10 Q Sorry. Let me start over. "Weekly 11 overtime. All hours in excess of 40 hours worked, 12 exclusive of the employee meal breaks during an 13 employee's regular payroll workweek will be considered 14 as weekly overtime hours." 15 Did I read that correctly? 16 A Yes. 17 Q And you recognize that was the policy on 18 the firm -- or on IBM's intranet? 19 A Yes, sir. 20 (Thereupon, marked for identification, 21 Defendant's Exhibit D29.) 22 BY MR. RAY: 23 Q Let me hand you what's been marked as 24 Defendant's Exhibit 29. That's another policy on the 25 intranet. If you could take a second to look at that	1 A Yes, sir. 2 Q How often? 3 A If I work a holiday, they give me a comp 4 time off and half time. 5 Q Well, let's -- I'll come back to the comp 6 time. Okay? What I want to ask you first, I want to 7 ask about the first page first. Okay? Not -- in the 8 first there, "Nonexempt employees must submit time 9 cards that are complete, accurate, and timely." 10 Did I had read that correctly? 11 A Yes. 12 Q Are you familiar with that policy? 13 A Yes, I'm familiar with it. 14 Q The next sentence says, "Managers should 15 review these and approve them as appropriate." 16 Did I read that right? 17 A Yes. 18 Q Then the next sentence says, "Nonexempt 19 employees should record all time worked and also 20 adjust their time cards for changes to their work 21 schedule or meal breaks." 22 Did I read that correctly? 23 A Yes. 24 Q And you understood that to be the policy? 25 A Yes.

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<p>1 Q Now let's talk about compensatory time on 2 the second page. Tell -- you said that's happened to 3 you? Compensatory time?</p> <p>4 A Sure. We've taken comp time. When people 5 work overtime, they're given the option of taking comp 6 time or get paid for the overtime. That's an ongoing 7 policy.</p> <p>8 Q Who is that?</p> <p>9 A All the managers. You name them. But I'm 10 just going to talk about my immediate managers. I'll 11 just talk about Juanlyn Williams. I'm just going to 12 address my immediate manager currently. Just give you 13 an example, if I work Thanksgiving, instead of getting 14 time and a half, they use the term, it's a -- it's a 15 regular -- we're open 24 by seven.</p> <p>16 So you have all these guys at home on 17 Thanksgiving, but you're asked -- you have to come in 18 and work, so they're going to let you get -- normally 19 get paid. They're going to give you half time, and 20 they'll give you a comp day off. There's no time and 21 a half. They're treating you like you're supposed to 22 be there. This is a regular workday.</p> <p>23 Q Do they give you regular time and then comp 24 you a half-day, or do they give you a half pay and 25 comp you a full day?</p>	<p>1 I worked Thanksgiving last year. I'm not sure, but I 2 forgot what -- I think it's Thanksgiving I worked: 3 Q Did you then take a day off?</p> <p>4 A I got a comp day.</p> <p>5 Q Do you recall when you took it?</p> <p>6 A No, sir, I don't.</p> <p>7 Q Do you know if you took it that Friday 8 after Thanksgiving?</p> <p>9 A No. No. We had to come in to work. 10 That's a regular workday for us.</p> <p>11 Q And how often -- let's use this year. 12 Let's use 2008. How many times have you gotten comp 13 time?</p> <p>14 A I haven't been asked to work any holidays 15 yet.</p> <p>16 Q And in 2007 we've talked about 17 Thanksgiving, so excluding Thanksgiving -- 18 A Uh-huh.</p> <p>19 Q -- how many times did you get comp time?</p> <p>20 A I'm trying to think if it was Thanksgiving 21 or if it was -- I'm not sure. All I know is I took a 22 comp time, a comp day, but most -- I was only asked to 23 work one holiday last year.</p> <p>24 Q One hour or one -- 25 A One holiday, I'm sorry.</p>
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<p>1 A Give me half time and a day off.</p> <p>2 Q So they only pay you half?</p> <p>3 A That's correct. I do not know -- I can 4 tell you this now. I do not know how they actually do 5 this for the people who come in or they schedule 6 people like every fifth week -- weekend. They come 7 in, and then give them two days off comp time. That 8 is blatant.</p> <p>9 Q Is -- okay. I'm still trying to figure out 10 the Thanksgiving Day. So if they only pay you half 11 time for Thanksgiving Day, do you have to go into 12 eTOTALS and somehow adjust that down to half?</p> <p>13 A Right. You have to go into there and put 14 in half time, and you're only going to get the half 15 time.</p> <p>16 Q And then you get a full day off?</p> <p>17 A Then you get a day off.</p> <p>18 Q Do you get the following Friday off or 19 something?</p> <p>20 A Basically, you can choose a day off as you 21 want, but you're not going to get time and a half for 22 working that holiday.</p> <p>23 Q Do you -- did you get comp time this year? 24 Or I should say 2007?</p> <p>25 A Last year I worked Thanksgiving, I believe.</p>	<p>1 Q And then 2006? Do you recall?</p> <p>2 A I'm sorry. I can't go back that far. Now 3 we're talking about Kerry Bethea and -- but give you 4 example, in the department, Teach, we didn't have the 5 same work, 24 by seven. We had Thanksgiving off and 6 the day after Thanksgiving.</p> <p>7 Q So did you not get comp time generally in 8 IBM Teach?</p> <p>9 A We never had that situation where we worked 10 through a holiday. We wasn't required to work 11 holidays. Like Thanksgiving would be a holiday for 12 us, where the new department, SCET, is a 24-by-seven 13 operation.</p> <p>14 Q I think you said when talking about comp 15 time, all the managers used it?</p> <p>16 A I -- I mis -- I just -- I spit that out, 17 but I'm only going to talk about my immediate area 18 where I can actually see folks taking comp days.</p> <p>19 Q And who have you seen take comp days?</p> <p>20 A Oh, Mary Davis, Darlene Campbell. I've 21 taken a comp day.</p> <p>22 Q In 2007?</p> <p>23 A I'm trying to think. I'm talking about 24 currently, like this year, and people I've known that 25 -- now, remember, now, they're saying that they're</p>

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<p>1 taking comp time. I can't verify, because I can't 2 look at their personal information. Okay. So I'm 3 just going by folks that have worked a holiday 4 normally are given the opportunity to take the 5 overtime or a comp day, where by law they should just 6 be compensated, paid overtime.</p> <p>7 But they use the terminology, and I keep 8 on -- we asked about this. You know, even though 9 we're scheduled 24 by seven, okay, they use that as 10 saying that, oh, you're supposed to be here. So it's 11 not really like a holiday, because we're scheduled to 12 be open 24 by seven, and they use that as an excuse to 13 give you half time, and then you can take a comp day 14 off.</p> <p>15 Q And I may have missed something. Did you 16 -- did you recall any other time other than for 17 Thanksgiving of '07 that you got comp time?</p> <p>18 A I'm sorry. For me? No. I only remember 19 working one holiday.</p> <p>20 Q I think you said Mary Davis has taken comp 21 time?</p> <p>22 A Yes. Mary Davis.</p> <p>23 Q Do you recall -- let me just stick with 24 her. Do you recall the circumstances?</p> <p>25 A Usually -- see, when a senior people in the</p>	<p>1 A Normally they do that because they're so 2 dead from working weekends, they might take the 3 following week. Say like they worked that weekend and 4 they might take Monday off, or they might take that 5 following weekend and make it a four-day weekend or a 6 three-day weekend. They do it that way. I'll be 7 honest with you. May I say something? I don't know 8 if I ever saw this statement.</p> <p>9 (Thereupon, marked for identification, 10 Defendant's Exhibit D31.)</p> <p>11 BY MR. RAY:</p> <p>12 Q Let me hand you what's been marked as 13 Defendant's Exhibit 31 and ask you, first of all, this 14 was an e-mail?</p> <p>15 A Uh-huh.</p> <p>16 Q It's actually -- I think it was produced as 17 a Team, but the underlying document is an e-mail to 18 the SCET Team. Do you recognize that e-mail?</p> <p>19 A Yes. There's a reason why I remember this 20 e-mail.</p> <p>21 Q This is an e-mail from Miss Williams dated 22 August 3rd of '07; correct?</p> <p>23 A Yes.</p> <p>24 Q And it says, "Team, IBM's business conduct 25 guidelines must be adhered to at all times."</p>
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<p>1 department, there's like a -- what we call analysts. 2 They're scheduled, like, each one takes a weekend, 3 like it might go six weeks, and it's my turn. Then -- 4 and they go through the list of analysts, and then 5 maybe that's six weeks later they might just do 6 another weekend. What happens, instead of overtime 7 they will get a Friday and a Monday off or something 8 like that. They take the comp time.</p> <p>9 Now, I heard them talking that they have 10 the choice of getting overtime or comp time, but I 11 always knew that there was something -- half time. 12 When you give up a holiday and you only get half time? 13 It was like, I never worked like that before. Never 14 worked like that before in all my years with IBM and 15 all my part-time jobs, if you worked a holiday, it was 16 like time and a half, sometimes double time. It 17 depends on the -- the company.</p> <p>18 Q Do you know if any of the comp time, like 19 what Mary Davis took or Darlene Campbell, was during 20 the same week that they worked a holiday?</p> <p>21 A Worked a holiday or weekends, something 22 like that.</p> <p>23 Q Do you know if any of it was during the 24 same week? That they actually took the comp time the 25 same week they earned the comp time?</p>	<p>1 Did I read that right?</p> <p>2 A Yes.</p> <p>3 Q And then it goes down to totals and vendor 4 time card reporting, and then it says, "Every employee 5 records information of some kind and submits it to the 6 IBM company or in behalf of the IBM company. Each 7 employee must accurately and honestly fill in the 8 reports."</p> <p>9 Did I read that right?</p> <p>10 A Yes.</p> <p>11 Q Did you understand that to mean that your 12 time cards and your vendor time card reporting, while 13 you were not a vendor -- let me back up. Does vendor 14 time card reporting refer to ILC, in your view?</p> <p>15 A There was some issues going on. That's why 16 we saw that e-mail.</p> <p>17 Q Did you understand this to mean that you 18 needed to record your time accurately for totals?</p> <p>19 A This was -- this was something with 20 overtime. I think somebody got fired around this time 21 for inaccurately reporting overtime.</p> <p>22 Q Did you understand Exhibit 31 to be a 23 mandate from Miss Williams that you and other 24 employees under her record their time and totals 25 accurately?</p>